

Docket No.: 713-1003



PATENT

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

Christian BAUER

U.S. Patent Application No. 10/767,745

Filed: January 30, 2004

For: RETAINING MEMBER

Confirmation No. 9896

Group Art Unit: 3632

Examiner: Alfred J. Wujciak, III

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

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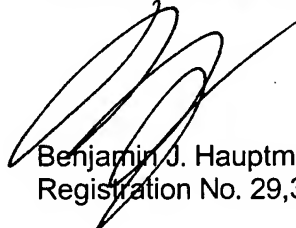
Sir:

In response to the Notice of Non-Compliant Appeal Brief mailed on March 13, 2006, Applicant respectfully submits the enclosed amended Appeal Brief. This response now complies with 37 CFR 41.37.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account

Respectfully submitted,

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BJH/KT/klf



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APPEAL BRIEF (Amended)

Sir:

This Appeal Brief is timely filed following a Notice of Appeal filed November 4, 2005, and in accordance with the provisions of 37 CFR § 41, this Appeal Brief is being filed together with a transmittal that includes an authorization to charge the amount of \$500.00 covering the 37 CFR § 41.20(b)(2)(ii) fee for filing of the Appeal Brief. If this fee is deemed to be insufficient, authorization is hereby given to charge any deficiency (or to credit any balance to Account No. 07-1337.

(i) REAL PARTY IN INTEREST

The real party in interest is:

ITW AUTOMOTIVE PRODUCTS GMBH & CO.KG
Erich-Norrenberg-Strasse 7
Iserlohn D-58636
Germany

04/14/2006 SDENBOB1 00000031 071337 10767745

01 FC:1402 500.00 DA

(ii) RELATED APPEALS AND INTERFERENCES

No other appeal or interference that would directly affect or be directly affected by or having a bearing on the Board's decision with this appeal exists.

(iii) STATUS OF CLAIMS

Claims 2-11 are cancelled. Claims 1 and 12-32 are pending in this application. Claims 1 and 12-32 are rejected. The rejection of claims 1 and 12-32 is appealed.

(iv) STATUS OF AMENDMENTS

The amendment filed on October 4, 2005 in response to the Final Office Action dated July 5, 2005, was entered in response to the filing of the Notice of Appeal on November 4, 2005. This amendment merely corrected minor errors in claims 24 and 32. Other than these minor corrections the claims stand as they were finally rejected.

(v) SUMMARY OF THE CLAIMED SUBJECT MATTER

Embodiments of the invention are directed to an arrangement which is configured to provide a retaining element that can be made of plastic and that enables pressure surges (for example) transmitted via the lines (such as fuel/brake/pressure transmission conduits for example) to be isolated more effectively from the support. These aspect of the claimed subject matter are set forth on page 2, lines 4-21 of the originally filed specification.

The broadest aspect of the invention for which protection is sought are set forth in independent claims 1 and 31. Claims 12-30 depend from claim 1 and claim 32 depends from claim 31. Reference numerals and related figures (in parenthesis) have been added to the claims (set forth below) to facilitate understanding.

Claim 1 recites:

1. A retaining member (1) for holding and supporting an elongated element from a support (45), said retaining member (1) comprising:
 - a base portion (2) attachable to the support (45); and
 - a holding portion (3) connected to said base portion (2) and comprising a recess (23-26) for holding the elongated element therein, said recess comprising:
 - a tubular portion (29-31); and
 - a plurality of spaced ribs (32-34) extending radially inwardly from said tubular portion (29-31) to have different radial heights (Fig. 3).

The subject matter of the above claim is illustrated in Figs. 1-6 and is disclosed on pages 5-8. More specifically, the base portion or basic body 2 (page 5, lines 24-25 of the originally filed specification) is attachable to a support such as element 45 (Figs. 4-6). In the illustrated arrangement this support portion 45 is provided with what is referred to as a welding bolt 44. This bolt 44 is received in the base portion 2 of the retaining member 1 via the provision of hole 5 and a seating arrangement 4. These are shown in Figs. 1-2 and 4-6. The seating arrangement 4 is described as having a cage shape (page 5, line 25). A holding portion 3 is connected to the base portion 2. The holding portions are disclosed at page 6, lines 17-21 and are disclosed as provided with linings designated by numerals 23-26 (see Fig. 1.) These linings have ribs 32-34 (see page 6, lines 17-21) which as also set forth on page 6, lines 22-27, have different heights or overhang "c", as it is referred to.

Claim 31 recites:

31. In combination,
 - an elongated element; and
 - a retaining member (1) for holding and supporting said elongated element from a support (45), said retaining member comprising:
 - a base portion (2) attachable to the support (45); and
 - a holding portion (3) connected to said base portion (2) and

comprising a recess (23-26) holding the elongated element therein, said recess comprising:

a tubular portion(29-31); and

a plurality of spaced ribs (32-34) extending radially inwardly from said tubular portion (29-31, Fig. 3), said ribs(32-34) including at least a first rib (31', 33') having a first radial height and at least a second rib (32", 33")having a second radial height smaller than the first radial height;

wherein said elongated element is resiliently supported in said recess by said first rib (31', 33') to be radially spaced from said second rib (32",33")and said tubular portion (29-31), said first rib (31', 33') being elastically deformable to allow said elongated element to come to rest on said second rib (32",33") without allowing said elongated element to contact said tubular portion (29-31)and said base portion (2).

The structure recited in the first six of the elements claimed are supported by the disclosure for the same reasons that the structure recited in claim 1, is supported. A redundant reiteration of this will be omitted for brevity.

The relationship between the first 31', 32' and second ribs 31", 32" is clearly illustrated in Fig. 3 and is disclosed at page 6, lines 22-27.

(vi) GROUND OF THE REJECTION

- 1) Claims 1, 12-27 and 29-32 are rejected under 35 USC § 103(a) as being unpatentable over United States Patent No. 5,464,179 to Ruckwardt in view of United States Patent No. 4,441,677 to Byerly.
- 2) Claim 28 is rejected under 35 USC § 103(a) as being unpatentable over Ruckwardt in view of Byerly and further in view of United States Patent No. 3,126,184 to Kropp.

(vii) ARGUMENTS

- 1) The Examiner has erred in rejecting claims 1, 12-27 and 29-32 under 35 USC § 103(a) as being unpatentable over Ruckwardt in view of Byerly.

In this rejection the Examiner relied upon Ruckwardt to disclose a retaining member 1, comprising a base portion 2 attachable to a support, a holding portion 3 connected to the base portion having a recess 17 for holding an elongated element therebetween. The Examiner further advanced that Ruckwardt discloses a tubular portion 16 and plurality of spaced ribs 18-19 extending radially inward from the tubular portion. In addition, Ruckwardt is cited to teach that the retaining member for supporting an elongate element is such that the base portion is made of a hard plastic and that the ribs and tubular portion are made of a softer plastic.

The Examiner then acknowledged that Ruckwardt fails to teach first ribs having a greater radial height and second ribs having a smaller radial height. To overcome this admitted shortcoming, the Examiner cited Byerly. More specifically, Byerly was cited to teach first and second ribs 32, 34 which have different radial heights and is relied upon to support the position that it would be obvious to use ribs of different heights in the arrangement of Ruckwardt. The motivation advanced for this allegedly obvious transfer of teaching is that it would "increase the force of retaining an object within the tubular portions."

Inasmuch as this rejection is made under 35 USC § 103, it is necessary, in order to establish a *prima facie* case of obviousness, to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed subject matter and without any inventive activity, be motivated to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered as statutorily required.

It is submitted that this person of ordinary skill in the art "thinks along the lines of conventional wisdom in the art and is not one who undertakes to innovate *Standard Oil Co. v American Cyanamid Co.*, 227 USPQ2d 293, 298 (Fed. Cir. 1985)

The position taken in this rejection is untenable for at least the reason that the hypothetical person of ordinary skill would not be led to the claimed subject matter when the Ruckwardt and Byerly reference are taken as a whole. That is to say, the Byerly arrangement is intended to be "wrapped" about a bundle of wires or a corrugated tube with two distinct

diameters, while on the other hand, Ruckwardt is directed to supporting a single tube-shaped part which is clearly going to be "pressed" into place.

Indeed column 3, lines 7-18, of Byerly discloses:

When the strip 30 is **rolled up into the loop**, as shown in FIGS. 1, 2 and 6, the individual needle-like protruberences cannot bunch up because they are staggered relative to each other across the width of the resilient lining. This allows the **individual protruberences to extend between individual wires in a bundle of wires**, such as shown for example in FIG. 6. Because of the staggering of the individual protruberences and also because the protruberences can bend in different directions, the protruberences can securely grasp individual wires in the bundle, thereby retaining the bundle of wires. (Emphasis added)

Further at column 3, lines 19 -31, Byerly discloses:

Also because the staggering prevents bunching, the strip 30 may accomodate different sizes of bundles of wires 36, as shown in FIG. 6, and also accomodate different size diameter wiring conduit 38, as shown in FIG. 2. **The protruberences extend into the convolutions of the wiring conduit 38 as shown in FIG. 2** to securely grip the conduit. To further accomodate the different size bundles of wires 36 or different size diameter wiring conduit 38, the protruberences in alternate rows may be shorter in height. Specifically, as shown in FIGS. 3 and 4, the protruberences in the rows 34 are shorter than the protruberences in the rows 32.

The arrangement of Ruckwardt on the other hand, is such as to support a fuel line or the like (see column 3, lines 1-4 of Ruckwardt). Thus, in the case of Ruckwardt, it is clear that whatever is going to be supported is going to be pressed into place because, and at the very least, there is no possible chance that any of the embodiments of Ruckwardt could be wrapped about an element, such as fuel pipe, and then connected in place. It is also self-evident that the three projections which are used in Ruckwardt, are use for a reason. Three projections will

always make contact with the curved outer surface of a tube-like member for the same reason that a tripod has only three legs and can stand stably on a non-flat surface. Indeed, a fourth projection or leg is going to demand a greater amount of precision to ensure that all four elements contact the intended surface in the intended manner c.f. a four legged table wherein one leg is annoyingly not the same as the other three.

The securing function may be somewhat similar in Ruckwardt and Byerly, however the concepts behind the two arrangements are quite different and there is nothing in either reference that would suggest to the hypothetical person of ordinary skill that teachings could be transferred therebetween. Indeed, if there was a clear need to increase retaining force, why not just drop Ruckwardt and use Byerly as it is? Once the arrangement of Byerly is wrapped around what is desired to be secured in place, and screwed/bolted in position, the projections are going to be forced into contact with element or elements that are being secured. However, the trouble of releasing the securing function with the Byerly arrangement is more complicated than with Ruckwardt and it is submitted that this would not go unnoticed by the hypothetical person of ordinary skill and accordingly detract from any consideration of transferring teachings to Ruckwardt.

Another stumbling block is that Byerly discloses arranging the different height projections in adjacent rows of even a pseudo-random pattern. It is hardly likely that the hypothetical person of ordinary skill would consider increasing the number of projections in Ruckwardt or rearranging a much larger number of projections so as to achieve rows, patterns, pseudo-random patterns or the like.

In re Keller (642 F.2d 413, 208 USPQ 871 (CCPA 1981)) proposes that "the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art."

It is submitted that a *prima facie* case has not been established, in at least that there is no showing that the hypothetical person of ordinary skill, after having considered Ruckwardt, would consider that there is need for further frictional forces. Indeed, it should be appreciated that the ease with which a fuel line or the like can be popped into place is, with the Ruckwardt arrangement, accompanied by a corresponding ease of removal. It is submitted that this

feature cannot be compromised for the sake of rejection, and must be contrasted with the screw fastening arrangement which would have to be considered if the teachings of Byerly were taken as a whole.

In a nutshell, there is no reason to take projections such as found in Byerly, wherein the projections are provided on a flexible wrappable strip-like member, and transfer them into a device wherein wrapping is totally absent/unnecessary. One arrangement is a snap fit, the other is screw into place collar.

Without the wrapping effect, the projections of Byerly completely lose their efficacy. Without the three point support of Ruckwardt, the elegant simplicity of the snap in/snap out function would tend to be lost and/or raise the specter of fuel lines or the like being overly difficult insert/remove from the Ruckwardt arrangement should the retaining force be increased as per the motivation alleged in this rejection.

It should be noted that the instant specification discusses Ruckwardt. Note that Ruckwardt claims priority to DE 40 34 545.9 and that this very German patent document is discussed in the opening paragraphs of the instant disclosure. A problem is disclosed relating to pressure surges which occur in the lines which are secured in place and indicates in paragraph [0006] of the US publication, that the disclosed embodiments are directed to providing a retaining element which improves the isolation of the pressure surges from the support.

In re Spinnoble (CCPA) 160 USPQ 237 indicates that a patentable invention may lie in discovery of source of problem even though remedy may be obvious once source of problem is identified. This is part of the "subject matter as a whole" which should always be considered in determining obviousness of an invention under § 103.

This case also warned that the court must be alert not to read obviousness into an invention on basis of applicant's own statements, i.e., the court must view the prior art without reading the applicant's teachings into that art, and that the issue is whether teachings of prior art would, in and of themselves and without benefits, of applicant's disclosure, make invention as a whole, obvious.

The rejection is submitted as being untenable for at least the reasons advanced above and it is submitted that a reversal is proper.

- 2) The Examiner has erred in rejecting claim 28 under 35 USC § 103(a) as being unpatentable over Ruckwardt in view of Byerly and further in view of Kropp.

Firstly, this rejection fails to establish a *prima facie* case of obviousness for the same reasons that the rejection of claims 1, 12-27 and 29-32 so fails. Further, in this rejection Kropp is relied upon to disclose ribs with convex curves. The rejection indicates that #56 is a convex curve and #57 is a concave curve. This is submitted as being a misinterpretation of the teachings of this reference. More specifically, the portions referred to form parts of two circular recesses (see Fig. 8) wherein the arrangement which is shown in Fig. 4 is closed shut. This structure would not lead the hypothetical person of ordinary skill to the conclusion that the tops of the protrusions which are shown in Ruckwardt could be shaped in the manner purported in this rejection.

It is respectfully submitted that the rejections which are advanced in this Office Action would not lead the hypothetical person of ordinary skill to the claimed subject matter and cannot be relied upon to establish a *prima facie* case of obviousness for at least this reason. A reversal of this rejection is also deemed proper and is respectfully requested.

Each of the claims is submitted to be patentable.

Claim 1 is patentable over the applied art for at least the reason that it calls for a plurality of spaced ribs which extend radially inwardly from the tubular portion to have different radial heights. Ruckwardt and Byerly would not lead the hypothetical person of ordinary skill to the claimed subject matter in that Byerly discloses the use of needle-like protuberances, as different from "ribs" which are required in the pending claims and which are absent and unsuggested in Byerly.

Ruckwardt on the other hand, discloses one rib (19) and two thickening or tab portions (18) – viz., Ruckwardt discloses two different types of projections and differentiates therebetween. Therefore, the combination of Ruckwardt and Byerly cannot, without further teachings, suggest the claimed plurality of ribs such as depicted in Fig. 2 of the instant application.

The American Heritage® Dictionary of the English Language: Fourth Edition. 2000, defines "rib" as:

One of a series of long curved bones occurring in 12 pairs in humans and extending from the spine to or toward the sternum. b. A similar bone in most vertebrates. 2. A part or piece similar to a rib and serving to shape or support: the rib of an umbrella. 3. A cut of meat enclosing one or more rib bones. 4. Nautical One of many curved members attached to a boat or ship's keel and extending upward and outward to form the framework of the hull. 5. One of many transverse pieces that provide an airplane wing with shape and strength. 6. Architecture A long, narrow, usually arched member projecting from the surface of a structure, especially such a member separating the webs of a vault. 7. A raised ridge or wale in knitted material or in cloth. 8. Botany The main vein or any of the prominent veins of a leaf or other plant organ. 9. Slang A teasing remark or action; a joke.

Thus, while the terms used in a claims should in fact be given the meaning as would be understood by the hypothetical person of ordinary skill, the above definition of "rib" must, at the very minimum, be used when interpreting the claim and the disclosure of the prior art. It is not seen that needle-like projections are not suggestive of ribs, and Ruckwardt, while disclosing the use of one rib, then proceeds to muddy the waters with disclosure of two other elements which are referred to as "thickening or tab portions" and not "ribs." The fact that Ruckwardt has gone to the trouble of disclosing elements 18 as not being ribs, renders it improper that they be taken as being "ribs" for the sake of rejection.

Thus, from at least a terminology aspect, there is a problem in that neither of Ruckwardt nor Byerly disclose or suggest a plurality of "ribs" per se.

Claim 12 is patentable over the applied art in that it calls for the ribs to be elongated in a circumferential direction of the tubular portion. The needle-like projections of Byerly would actually teach away from this structure, and Ruckwardt is such that this not clear that if any transfer of teachings were to be made, just what effect it would in fact have on the structure of Ruckwardt.

Note must be had to the intention of Byerly to (as emphasized in the above quote of this reference) use the pointy nature of the projections to extend into recesses such as the corrugations and between the individual wires in a bundle wires. To use anything but pointy projections could not be contemplated by the hypothetical person of ordinary skill after considering Byerly as a whole, in that this would effectively run counter to the intention of Byerly and be ineffective for the purpose disclosed in this reference.

Claim 13 is patentable over the art applied in that it calls for the base portion to be made of a harder plastic material and the ribs and the tubular portion to be made of a softer plastic material. Ruckwardt can be relied upon to disclose a sole single rib, while Byerly actually fails to disclose a structure which could be deemed a rib per se. Therefore, forming a plurality of ribs out of a plastic which is softer than the plastic of the base portion, cannot be seen as forthcoming from the combination of the two references.

Claim 14 is patentable over the art applied in that it calls for the elongated ribs to describe circular or helical curves. This structure has not been addressed in the rejection and there is nothing in either of the Ruckwardt or Byerly which would suggest ribs having this configuration. Clearly Byerly, if considered, would lead away from the same and toward the needle-like projections which are neither circular nor helical in configuration.

Claim 15 is patentable over the art applied in that it calls for the ribs to be disposed at a uniform spacing in an axial direction of the tubular portion. Neither Ruckwardt nor Byerly can be relied upon to suggest ribs to be oriented in this manner or to have uniform spacing therebetween. Viz., in terms of ribs, Ruckwardt discloses one and Byerly has none.

Claim 16 is patentable over the art applied in that it calls for the ribs to include first ribs having a greater radial height and second ribs having a smaller radial height, and wherein the first and second ribs are alternating arranged in an axial direction of the tubular portion. Neither Ruckwardt nor Byerly can be relied upon to suggest ribs to be oriented in this manner.

Claim 17 is patentable over the art applied in that it calls for the ribs to include first ribs having a first radial height and second ribs having a second radial height smaller than the first radial height, and wherein a first width of the first ribs at tops thereof is smaller than a second

width of the second ribs at tops thereof. Neither Ruckwardt nor Byerly can be relied upon to suggest ribs to be configured in this manner and is beyond "designer's choice" to render it obvious – note being called to the fact that Byerly suggests pointy ends on the projections – to permit easy ingress between wires or into corrugations.

Claim 18 is patentable over the art applied in that it calls for the first radial height of the first ribs to be greater than the first width at the tops of the first ribs. Byerly fails to disclose a plurality of ribs and any modification in light of teachings which can be gleaned from Byerly is not going to suggest that the radial height of one set of ribs be greater than the width of the second set. It is submitted that the rejection has not addressed these requirements. Neither Ruckwardt nor Byerly can be relied upon to suggest ribs configured in this manner and is beyond "designer's choice" to render it obvious.

Claim 19 is patentable over the art applied in that it calls for the second radial height of the second ribs to be smaller than the second width at the tops of the second ribs. Neither Ruckwardt nor Byerly can be relied upon to suggest ribs with this height/width relationship. It is again submitted that the rejection has not addressed these requirements and that it is beyond "designer's choice" to render it obvious.

Claim 20 is patentable over the art applied in that it calls for the ribs to comprise at least one first rib having a first radial height and a plurality of second ribs having a second radial height smaller than the first radial height. This claim further calls for the holding portion to further comprise an elongated slot for allowing insertion of the elongated element into the recess via the elongated slot; and for the elongated slot to have opposite elongated edges extending in an axial direction of the tubular portion and the first rib is spaced, in a circumferential direction of the tubular portion, from each of the edges of the elongated slot by at least one of the second ribs.

The rejection has failed to address these combination of structural requirements and thus fails to establish a *prima facie* case of obviousness for at least this reason.

Claim 21 is patentable over the art applied in that it calls for the base portion to be made of a harder plastic material and the first and second ribs are made of a softer plastic material. It is submitted that the combination of Ruckwardt and Byerly fails to suggest a structure having first

and second sets of ribs and does not suggest to form them of a softer plastic as per the claimed requirements.

Claim 22 is patentable over the art applied in that it calls for the first and second ribs are elongated in the axial direction of the tubular portion, and alternating arranged in the circumferential direction of the tubular portion with a uniform spacing. As noted above, the combination of Ruckwardt and Byerly fails to provide a tenable case for a structure having first and second ribs which are arranged in the claimed manner.

Claim 23 is patentable over the art applied in that it calls for the first and second ribs to be elongated in the axial direction of the tubular portion and alternating arranged in the circumferential direction of the tubular portion, and wherein the alternating arranged ribs include at least three the first ribs and at least three the second ribs. Inasmuch as Byerly fails to disclose ribs per se, it is not seen that the claimed requirements of at least three first ribs and at least three second ribs could be distilled from the combined teachings of Ruckwardt and Byerly.

Claim 24 is patentable over the art applied in that it calls for the holding portion mentioned above to include at least three ribs, the first two ribs which are arranged along the edges of the slot. It is submitted that this structure has neither been addressed in the rejection nor is rendered obvious by either of Ruckwardt and Byerly.

Claim 25 is patentable over the art applied in that it calls for a first width of the first rib at a top thereof to be smaller than a second width of the second ribs at tops thereof. Byerly would lead toward points at the tops of the any element or elements that may be transferred to Ruckwardt, and thus away from the subject matter set forth in this claim. That is to say, the point of Byerly is to provide pointy members so that they can poke in between wires or into recess and thus provide the gripping action that is a feature of Byerly. This would not escape the notice of the hypothetical person of ordinary skill and would therefore be part of any transfer of teachings that were made based on the teachings of Byerly.

Claim 26 is patentable over the art applied in that it calls for the first radial height of the first rib to greater than the first width at the top of the first rib. This relationship has not been addressed in the rejection and clearly neither of Ruckwardt or Byerly contain any teachings

which might lead toward a structure having these features.

Claim 27 is patentable over the art applied in that it calls for the second radial height of the second ribs to be smaller than the second width at the tops of the second ribs. Again this relationship has not been addressed in the rejection and clearly neither of Ruckwardt or Byerly contain any teachings which might lead toward a structure having these features.

Claim 28 is patentable over the art applied in that it calls for the top of the first rib to describe a convex curve and tops of the second ribs to describe concave curves. The pointy nature of the projections which are suggested in Byerly clearly teach away from this arrangement and it not seen that a *prima facie* case of obviousness can be established in light of the same.

Claim 29 is patentable over the art applied in that it calls for a further holding portion to be connected to the base portion and to comprise a further recess for holding another elongated element therein. This further recess is required to have a smooth inner surface free of ribs or teeth and for the holding portions to be positioned on opposite sides of the base portion. This structural limitation has not been addressed in the rejection nor is rendered obvious by any teachings that can be distilled from Ruckwardt and Byerly. Clearly, Byerly cannot be relied upon to assist in the realization of this structure.

Claim 30 is patentable over the art applied in that it calls for a resilient contact element adapted to bear against a surface of the support when the base portion is attached to the support. This resilient contact element is recited as being made from the same plastic material as the first and second ribs. This structural limitation has not been addressed in the rejection nor is rendered obvious by any teachings that can be distilled from Ruckwardt and Byerly.

Claim 31 is patentable over the art applied in that it calls for a combination of an elongated element; and a retaining member for holding and supporting the elongated element from a support. The retaining member is such as to comprise: a base portion attachable to the support; and a holding portion connected to the base portion and comprising a recess holding the elongated element therein. The recess in turn comprises: a tubular portion; and a plurality of spaced ribs extending radially inwardly from the tubular portion, the ribs including at least a first

rib having a first radial height and at least a second rib having a second radial height smaller than the first radial height. In this arrangement, the elongated element is resiliently supported in the recess by the first rib so as to be radially spaced from the second rib and the tubular portion. The first rib is required to be elastically deformable to allow the elongated element to come to rest on the second rib without allowing the elongated element to contact the tubular portion and the base portion.

This combination of structures/features cannot be distilled from the applied art, and in fact the combination has not been addressed in the rejection. That is to say, the rejection merely advanced that Ruckwardt teaches the retaining member comprising a resilient contact element (20) but fails to teach the resilient contact element is made of the same plastic material as the first and second ribs. The rejection then advanced motivation which alleges that it would have been obvious at the time of invention to use the same plastic to form the first and second ribs for the resilient contact element "to provide convenience for inserting screw/bolt therein."

It cannot be seen that there is any relation to the resiliency of a material and the ease with which a bolt or screw can be inserted. The rejection fails completely to establish any rational nexus which might render this position tenable.

Claim 32 is patentable over the art applied in that, in addition to the limitations contained in claim 31, it calls for a support to which the base portion is attached; and a resilient contact element that bears against the support and spaces the base portion from the support. The base portion is required to be made of a harder plastic material whereas the first and second ribs, the tubular portion and the resilient contact element are made of a softer plastic material. The combination of elements which are represented by this claim is non-obvious for at least the reasons advanced above.

Thus, as will be appreciated, none of the pending claims are rendered obvious in light of the teachings of the art which is applied. A reversal of all rejections is deemed fully appropriate.

Conclusion

In view of above, appellants respectfully solicit the reversal of all of rejections of the pending claims and pass this application on to allowance.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account

Respectfully submitted,

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Date: April 13, 2006
BJH/KT/klf

(ix) EVIDENCE APPENDIX

1. *Standard Oil Co. v American Cyanamid Co.*, 227 USPQ2d 293, 298 (Fed. Cir. 1985)
2. *In re Keller* (642 F.2d 413, 208 USPQ 871 (CCPA 1981
3. *In re Spinnoble* (CCPA) 160 USPQ 237

(x) RELATED PROCEEDING APPENDIX

There are no related proceedings

(viii) CLAIMS APPENDIX

1. A retaining member for holding and supporting an elongated element from a support, said retaining member comprising:
 - a base portion attachable to the support; and
 - a holding portion connected to said base portion and comprising a recess for holding the elongated element therein, said recess comprising:
 - a tubular portion; and
 - a plurality of spaced ribs extending radially inwardly from said tubular portion to have different radial heights.
12. The retaining member as claimed in claim 1, wherein said ribs are elongated in a circumferential direction of said tubular portion.
13. The retaining member as claimed in claim 12, wherein said base portion is made of a harder plastic material and said ribs and said tubular portion are made of a softer plastic material.
14. The retaining member as claimed in claim 12, wherein said elongated ribs describe circular or helical curves.
15. The retaining member as claimed in claim 12, wherein said ribs are disposed at a uniform spacing in an axial direction of said tubular portion.
16. The retaining member as claimed in claim 12, wherein said ribs include first ribs having a greater radial height and second ribs having a smaller radial height, and wherein said first and second ribs are alternatingly arranged in an axial direction of said tubular portion.
17. The retaining member as claimed in claim 12, wherein said ribs include first ribs having a first radial height and second ribs having a second radial height smaller than the first radial height, and wherein a first width of said first ribs at tops thereof is smaller than a second width of said second ribs at tops thereof.

18. The retaining member as claim in claim 17, wherein the first radial height of said first ribs is greater than the first width at the tops of said first ribs.

19. The retaining member as claimed in claim 17, wherein the second radial height of said second ribs is smaller than the second width at the tops of said second ribs.

20. The retaining member as claimed in claim 1, wherein
said ribs comprise at least one first rib having a first radial height and a plurality of second ribs having a second radial height smaller than the first radial height;
said holding portion further comprises an elongated slot for allowing insertion of the elongated element into said recess via said elongated slot; and
said elongated slot has opposite elongated edges extending in an axial direction of said tubular portion and said first rib is spaced, in a circumferential direction of said tubular portion, from each of the edges of said elongated slot by at least one of said second ribs.

21. The retaining member as claimed in claim 20, wherein said base portion is made of a harder plastic material and said first and second ribs are made of a softer plastic material.

22. The retaining member as claimed in claim 20, wherein said first and second ribs are elongated in the axial direction of said tubular portion, and alternately arranged in the circumferential direction of said tubular portion with a uniform spacing.

23. The retaining member as claimed in claim 20, wherein said first and second ribs are elongated in the axial direction of said tubular portion and alternately arranged in the circumferential direction of said tubular portion, and wherein said alternately arranged ribs include at least three said first ribs and at least three said second ribs.

24. The retaining member as claimed in claim 20, wherein said holding portion includes at least three said first ribs two of which are arranged along the edges of said slot.

25. The retaining member as claimed in claim 20, wherein a first width of said first rib at a top thereof is smaller than a second width of said second ribs at tops thereof.

26. The retaining member as claim in claim 25, wherein the first radial height of said first rib is greater than the first width at the top of said first rib.

27. The retaining member as claimed in claim 25, wherein the second radial height of said second ribs is smaller than the second width at the tops of said second ribs.

28. The retaining member as claimed in claim 20, wherein a top of said first rib describes a convex curve and tops of said second ribs describe concave curves.

29. The retaining member as claimed in claim 20, further comprising a further holding portion connected to said base portion and comprising a further recess for holding another elongated element therein, said further recess having a smooth inner surface free of ribs or teeth;
wherein said holding portions are positioned on opposite sides of said base portion.

30. (Previously presented) The retaining member as claimed in claim 21, further comprising a resilient contact element adapted to bear against a surface of the support when said base position is attached to the support, said resilient contact element being made from the same plastic material as said first and second ribs.

31. In combination,
an elongated element; and
a retaining member for holding and supporting said elongated element from a support, said retaining member comprising:
a base portion attachable to the support; and
a holding portion connected to said base portion and comprising a recess holding the elongated element therein, said recess comprising:
a tubular portion; and
a plurality of spaced ribs extending radially inwardly from said tubular portion, said ribs including at least a first rib having a first radial height and at least a second rib having a second radial height smaller than the first radial height;
wherein said elongated element is resiliently supported in said recess by said first rib to be radially spaced from said second rib and said tubular portion, said first rib being elastically

deformable to allow said elongated element to come to rest on said second rib without allowing said elongated element to contact said tubular portion and said base portion.

32. The combination of claim 31, further comprising
a support to which said base portion is attached; and
a resilient contact element that bears against the support and spaces said base portion from said support;

wherein said base portion is made of a harder plastic material whereas said first and second ribs, said tubular portion and said resilient contact element are made of a softer plastic material.